TRUSTS—POWER OF APPOINTMENT—EXERCISE.—A certain person being advised that she was to be the beneficiary under a trust to be created, and of which she was to have a power of appointment by will, executed a will disposing of a sum about equal to the principal of the trust. She had no assets of her own either at the time of the execution of the will or at her death. The trust instrument was not, in fact, executed until after the will was made. An action was brought by the trustee to settle his accounts, upon a question of whether the will was an exercise of the power given by the trust instrument. *Held*, the will was a valid exercise of the power of appointment. *Title Guarantee & Trust Co.* v. *Ebaugh*, 184 N. Y. Supp. 351.

The general rule that a will takes effect at the testator's death is applicable with reference to the execution of a power of appointment. *In re Chapman*, 117 N. Y. Supp. 679, affirmed 196 N. Y. 561, 90 N. E. 1157; *In re Haggerty*, 112 N. Y. Supp. 1017, affirmed 194 N. Y. 550, 87 N. E. 1120.

The exercise of the power is always a question of the donee's intention. *Lee* v. *Simpson*, 134 U. S. 572; *Bilderback* v. *Boyce*, 14 S. C. 528. Such intent must appear in the execution of a power. *Payne* v. *Johnson*, 95 Ky. 175, 24 S. W. 238; *Hill* v. *Conrad*, 91 Tex. 341, 43 S. W. 789. Yet it need not be express. *Funk* v. *Eggleston*, 92 Ill. 515; *Patterson* v. *Wilson*, 64 Md. 195, 1 Atl. 68. But it may be gathered from a specific reference to the property which is the subject of the power. *Hood* v. *Haden*, 82 Va. 58, 594; *Walke* v. *Moore*, 95 Va. 729. Or, as it is held by the weight of authority, where, as in the instant case, the donee's act would be ineffectual unless considered as an exercise of the power. *Warner* v. *Connecticut, etc., Co.*, 109 U. S. 357; *Bullerdick* v. *Wright*, 148 Ind. 477, 47 N. E. 931.

For the statutory provision in Virginia on this point, see Va. Code, 1919, § 5241.